

Phulsingh Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Feb-16-1991

Reported in : 1991CriLJ2954

Judge : S.K. Chawla, J.

Acts : [Protection of Civil Rights Act, 1955](#) - Sections 7(1) and 12; ;[Probation of Offenders Act, 1958](#) - Sections 4 and 16A; ;[Prevention of Food Adulteration Act, 1954](#) - Sections 20AA

Appeal No. : Crl. Revision No. 361 of 1986

Appellant : Phulsingh

Respondent : State of Madhya Pradesh

Advocate for Def. : Paliwal, Govt. Adv.

Advocate for Pet/Ap. : S.C. Datta, Adv.

Disposition : Revision allowed

Judgement :

ORDER

S.K. Chawla, J.

1. This order shall also govern the disposal of Criminal Revision No. 362/ 86. The applicant is common in both the revisions, who was convicted by the two Courts below of the offence Under Section 7(1)(d) of the [Protection of Civil Rights Act, 1955](#) (hereinafter referred to as P.C.R. Act) and sentenced to R.I. for three months and a fine of Rs. 500/-, in default to further imprisonment for one month for each offence committed with respect to different persons.

2. The facts found by the Courts below may first be seen. Applicant Phulsingh, said to be aged about 60 years when the prosecutions were launched against him, is a Lodhi Thakur residing in village Semaralodhi, P. S. Malthoun, district Sagar. He is said to have threatened to overrun one Balla, a Chamar by caste, by his tractor and to kill him. When Balla went to report the matter to the police and was returning back on 29-6-82, the applicant is said to have shouted at Balla by saying

^pejk esjs fo# fjiks ZV D;ksadh] eSa rqels ekugkf ds 5]000@& #i;s ywxkA**

7(1)(d)

3. Appellant Phulsingh was also said to be having land dispute with an another Harijan of his village named Parsadi. On 29-6-1982, which is also the date of the first incident described already, the applicant is said to have threatened and abused Parsadi by saying

^pejk HkksIMh ds txg NksM+nsuk ugha rks xksyh ls ekj nwxkA**

^^;gk ls pefj;k fudyh rks ykrekjsaxs] rsjs cki dk jkLrk ugha g SA**

4. Shri Datt, learned counsel for the applicant, sought to make only two points. In the first place, it was urged that there was nothing to show that the alleged insults committed by the applicant were 'on the ground of untouchability'. Hence no offence within the meaning of Clause (d) of Sub-section (1) of Section 7 of P.C.R. Act was made out. In the second place, it was urged that the applicant is an old man and in case his first submission was not accepted, the applicant may be given benefit of probation.

5. It is proper to dispose of summarily the second submission first. A minimum sentence of imprisonment for one month and fine of Rs. 100/- is prescribed by Section 7(1) of P.C.R. Act. Shri Datt argued that Section 4 of the Probation of Offenders-Act, 1958 had overriding effect over other laws which was clear from the words 'notwithstanding anything contained in any other law for the time being in force' used in Section 4 and hence provisions of the Probation of Offenders Act should be applied even to P.C.R. Act prescribing minimum sentence. Reliance was placed by Shri Datt on the case of State v. Rathi Navelu, 1973 Cri LJ 354 (Madras). It was conceded by Shri Datt that the principle laid in the said ruling would not apply where the Special Act prescribing minimum sentence expressly excluded the use of probation. Shri Datt drew attention of this Court to Section 20A A of the [Prevention of Food Adulteration Act, 1954](#), expressly excluding the use of probation to a person convicted of an offence under that Act unless that person was below 18 years of age. Shri Datt was perhaps ignorant of similar provision contained in P. C. R. Act. That provision is Section 16A of the Act which says that the provisions of [Probation of Offenders Act, 1958](#) shall not apply to any person above the age of 14 years who is found guilty of having committed any offence punishable under P.C.R. Act. In view of the said provisions, the provisions of Probation of Offenders Act are inapplicable, for the simple reason that the applicant was much more old than 14 years, infact an old man of more than 60 years. Hence, the submission that the applicant may be given benefit of probation has only to be stated to be summarily rejected.

6. Coming to the first submission made by Shri Datt, a perusal of Section 7(1)(d) of P.C.R. Act would show that it punishes insult or attempt at insult of a member of Scheduled Caste 'on the ground of untouchability'. Section 12 speaks of presumption, laying down that where any act constituting an offence under the Act is committed in relation to a member of a Scheduled Caste, the Court shall presume, unless the contrary is proved, that such act was committed on the ground of 'untouchability'. That presumption is a rebuttable presumption. It deals only with special rule of evidence and provides for burden of proof. Keeping aside that provision for a moment, it is clear that insult simpliciter of a member of Scheduled Caste is not within the mischief of Clause (d) of Sub-section (1) of Section 7. It is further necessary that the insult must have been committed 'on the

ground of untouchability'. The question is what is the test to determine whether the insult was or was not 'on the ground of untouchability'? It is possible in my view to conceive of a test. The test is to ask the question, whether insult would have taken place irrespective of the fact whether the victim was or was not a member of the Scheduled Caste. If yes, the insult was insult simpliciter outside the ambit of Clause (d). On the other hand, if insult had taken place only because the victim was a member of Scheduled Caste and it would not have taken place if he had been of higher caste, then insult was insult on the ground of untouchability. Another rough and ready test, though not very infallible, would be to ask the question whether insult was part of personal quarrel which took place between a person of higher caste and a member of scheduled caste; or was the insult offered in cool and studied manner in the absence of any quarrel. In the first situation, the insult would most likely be insult simpliciter while in the second situation it would be insult on the ground of untouchability. That is not to say that a person insulting on the ground of untouchability would be allowed to get away by merely picking up a quarrel. An instance may be given to make the propositions clear. A, a member of Scheduled Caste, is using a public bathing ghat. B, an obscurantist higher caste Hindu insults A and evicts him from that ghat saying that the ghat is reserved for higher caste people. This will be a case of insult on the ground of untouchability. In the same case, B's clothes lying on the ghat get trampled and soiled by the feet of A. B, getting annoyed because of spoiling of his clothes insults A even calling him a Chamar. No-doubt, calling Chamar a Chamar would be insulting a member of scheduled caste but that would be a case of insult simpliciter of a member of scheduled caste but not of insult on the ground, of untouchability.

7. In both the cases under consideration, there existed past inimical relations between the applicant and the alleged victims belonging to scheduled caste. In Criminal Case No. 640/82 in the context of bad blood between the parties, Balla, a member of the scheduled caste, had gone to the police station to lodge a report against the applicant. When the applicant saw Balla returning, he in a fit of anger insulted Balla by uttering the words already described. He also called Balla a Chamar. Now calling a Chamar a Chamar may be insulting him but it would not be an insult on the ground of untouchability. The insult which the applicant offered to

Balla was insulted in a personal quarrel and would have been offered by the applicant no matter to what caste Balla belonged. Incidentally Balla belonged to a member of the scheduled caste. But that would not make the insult an insult on the ground of untouchability. In Criminal Case No. 639/82 applying the above test, the insults offered by the applicant to Parsadi and his wife were insults simpliciter and not insults on the ground of 'untouchability'. When full facts of a case are known, the presumption Under Section 12 would not turn the decision of the case.

8. It is proper to bear in mind that what P.C.R. Act seeks to punish is preaching and practice of untouchability vide the preamble given at the outset of the Act. The Act does not seek to punish acts simply because they were committed in relation to a person belonging to scheduled caste.

9. For the foregoing reasons, it will be proper to hold that the acts of insult alleged in both the cases were insults otherwise than on the ground of untouchability, although of the members of scheduled caste. They were, therefore, outside the mischief of the Act.

10. The revisions are allowed. The convictions and sentences of the applicant in both the cases are set-aside. He is acquitted of the said offences in both the cases. Fines paid by him shall be refunded.